IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. DENNIS VALENZUELA CARRILLO, Appellant.	)	2 CA-CR 2006-0053 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-68474

Honorable Paul S. Banales, Judge Pro Tempore
Honorable Howard Hantman, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Eric J. Olsson
Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery
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Attorneys for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 After a jury trial held in his absence, appellant Dennis Valenzuela Carrillo was convicted of driving while under the influence of an intoxicant (DUI) and driving with a blood alcohol concentration of .10 or greater, both misdemeanors, and criminal damage of

more than $2,000 but less than $10,000, a class five felony. On appeal, Carrillo challenges the sufficiency of the evidence to support the criminal damage conviction. He contends, in a related argument, that the only evidence supporting the verdict was improperly admitted hearsay. We affirm.

¶2 We will not disturb a conviction on a challenge to the sufficiency of the evidence to support the conviction unless "there is a complete absence of probative facts to support [the jury's] conclusion." *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988). In other words, we will reverse only if it "clearly appear[s] that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). And we view the evidence in the light most favorable to sustaining the verdict. *Id*.

¶3 The victim testified that, as he approached his parked Isuzu Trooper, he saw a person later identified as Carrillo in a Ford Explorer, "slumped behind the wheel" with the headlights and stereo turned on, the engine running, and parked "nose-to-nose" with the victim's Trooper. The Explorer clearly had crashed into the left front fender of the Trooper, knocking the Trooper ten feet from its parking space. The Trooper sustained damage to its left headlight and fender. The victim testified that his Trooper had not been damaged previously and that he had obtained an estimate to repair it for $2,120.

¶4 Carrillo contends this estimate was insufficient to establish the amount of damage, claiming "[a]n estimate is approximate and tentative." He adds that, "[b]ecause the repair estimate was only an approximation, and the amount exceeded the statutory minimum

for a class 5 felony by only $121—about 5%—it was not substantial evidence that the damage was $2,000 or more." He also contends the evidence was improperly admitted hearsay, and though he concedes he did not object to the testimony, he asserts it nevertheless "is not conclusive proof of the matter for which it was offered." Carrillo argues the error and insufficiency in the evidence were exacerbated by the prosecutor's misstatements in closing argument that the damage exceeded $3,900. And, he contends, the error in admitting the hearsay was fundamental.

¶5 Even assuming, without deciding, that the victim's testimony about the estimate he had received for his car was hearsay,[1] as Carrillo concedes, he did not object, restricting our review to one for fundamental error. *See State v. Fullem*, 185 Ariz. 134, 137, 912 P.2d 1363, 1366 (App. 1995); *see also State v. Roque*, 213 Ariz. 193, ¶ 62, 141 P.3d 368, 387 (2006). "Fundamental error is error of such dimensions that it cannot be said it is possible for a defendant to have had a fair trial." *State v. Smith*, 114 Ariz. 415, 420, 561 P.2d 739, 744 (1977). Carrillo is not entitled to relief based on this "unobjected-to trial error . . . [unless he can] show 'both that fundamental error exists and that the error in [his or her] case caused . . . prejudice.'" *State v. Ruggiero*, 211 Ariz. 262, ¶ 25, 120 P.3d 690, 696 (App. 2005), *quoting State v. Henderson*, 210 Ariz. 561, ¶ 20, 115 P.3d 601, 607 (2005) (*third alteration in Ruggiero*).

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[1]The state maintains the evidence was not hearsay because of the well-established law that opinion testimony by the owner of property as to its value is admissible. *See, e.g., State v. Anderson*, 20 Ariz. App. 309, 313, 512 P.2d 613, 617 (1973). But, damage and value are not the same thing, the former requiring an assessment by someone versed in the business of repairing damaged property, here, a car.

¶6 Any error here cannot be characterized as fundamental. The victim testified he had obtained an estimate for the repair of the Trooper, presumably from an automobile body repair shop. He verified the amount of the estimate and confirmed that he still had a written copy of it. From this testimony, reasonable jurors had sufficient evidence to support the conclusion beyond a reasonable doubt that the estimate reflected the cost to repair the Trooper. It was for the jury to weigh the evidence and determine the estimate's accuracy. *See generally State v. Manzanedo*, 210 Ariz. 292, ¶¶ 3-4, 110 P.3d 1026, 1027 (App. 2005). With respect to the prosecutor's misstatements, there was no objection below; therefore, any error was waived. Moreover, the jury heard the victim's testimony, and he clearly stated the estimated damage was $2,120. The jury was instructed to base its verdicts on the evidence presented. We assume jurors follow the instructions they are given. *State v. Newell*, 212 Ariz. 389, ¶ 68, 132 P.3d 833, 847 (2006).

¶7 Affirmed.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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PHILIP G. ESPINOSA, Judge